

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

CHAVEZ PROPERTIES-AIRPORT)
 PARKING ALBUQUERQUE, LP)
 a Georgia limited partnership,)
 and PARKING COMPANY OF)
 AMERICA, INC., a Georgia)
 corporation,)

Plaintiffs,)

v.)

JOHN LORENTZEN, individually)
 and PARK AND SHUTTLE, INC.,)
 a New Mexico corporation, and)
 WES GOLDEN, individually,)

Defendants.)

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CIV. 02-145 JP/ACT (ACE)

MEMORANDUM OPINION

This matter is before the Court on the application of the plaintiffs for attorneys' fees, together with a memorandum in support of that application, the defendants' response to the application for attorneys' fees, and the reply of plaintiffs to defendants' response. The Court has reviewed the respective briefs of the parties, as well as the Parking Management Agreement which plaintiffs claim constitute the basis for the granting of attorneys' fees.

Both parties recognize that the "American Rule," whereby each party bears the financial burden of litigating a civil claim, absent a statute or agreement to the contrary, applies in New Mexico. See *McClain Co. v. Page & Wirtz Construction Co.*, 102 N.M. 284, 694 P.2d 1349 (1985); *United States v. McCall*, 235 F.3d 1211 (10th Cir. 2000); and *Montoya v. Villa Linda Mall*, 111 N.M. 128, 793 P.2d 258 (1990).

Plaintiffs rely on a provision in the Joint Venture Agreement (Exhibit No. 1) which provides as follows:

1.08 Unauthorized Acts. Either Party herein acting or purporting to act for or on behalf of the other Party hereto in violation of the terms and provisions of this Agreement shall be acting without authority and the Party acting or purporting to act shall indemnify and hold the other Party harmless from and against any and all claims, loss, liability or limitation, all attorneys' fees and expenses actually incurred.

In the context of the agreement, it is clear that this provision relates to liabilities to third parties created by the unauthorized conduct of one or the other of the parties to the Joint Venture Agreement. This provision does not set aside the "American Rule" applicable in New Mexico as to actions between the parties to the Joint Venture. For these reasons, the Court finds that plaintiffs' application for attorneys' fees should be denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 11th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lyle E. Strom", written over a horizontal line.

LYLE E. STROM, Senior Judge
United States District Court